

Service Date: June 27, 2001

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of	)	UTILITY DIVISION
the Joint Application for Approval of the	)	
Sale of Montana Power Company	)	DOCKET NO. D2001.1.5
To NorthWestern Corporation	)	ORDER NO. 6353

**ORDER DENYING APPLICATION AS FILED  
AND PROVIDING DIRECTION AND AN  
OPPORTUNITY TO REFILE**

**Background**

1. On January 12, 2001, the Montana Power Company (MPC) and NorthWestern Corporation (NW) submitted a joint application requesting that the Montana Public Service Commission (Commission) determine that “MPC’s utility operations, as a subsidiary or division of NorthWestern, will continue to be a fit, willing and able provider of adequate service and facilities at just and reasonable rates.” According to the application, NW’s ownership of MPC is in the public interest. NW’s utility business has a history of excellent customer service at reasonable rates. After the transaction, MPC will continue to provide reliable service at reasonable rates, subject to Commission jurisdiction, from its headquarters in Butte, Montana.

2. Regarding regulatory approvals, MPC and NW asserted that the Application “is limited to a determination [by the Commission] that Montana Power’s utility operations, as a division or subsidiary of NorthWestern, will continue to be a fit willing and able provider of adequate service and facilities at just and reasonable rates.” According to the Application, MPC maintains that when an entire business is sold, the law requires that the proceeds flow to shareholders. MPC and NW asserted that a “determination of the allocation issue” is not germane to a Commission finding that MPC will continue to be a fit, willing and able provider of adequate service and facilities at just and reasonable rates.

3. On March 1, 2001, the Commission issued a Notice of Application and Intervention Deadline. The Commission requested that intervening parties state their views as to

the scope of review necessary in this docket and identify specific issues for review. The Commission received requests to intervene from the Department of Natural Resources and Conservation, Large Customer Group, Montana Consumer Counsel, Colstrip Energy Limited Partnership and Yellowstone Energy Limited Partnership. Montana Consumer Counsel and Large Customer Group commented on the scope of review.

### **Summary of Comments**

#### **Montana Consumer Counsel.**

4. Montana Consumer Counsel (MCC) stated that the Commission's review of the proposed sale must encompass all factors that could impact the provision of reliable, reasonably priced electricity and natural gas service to Montana customers in the future. According to MCC, the review must evaluate what rate levels constitute reasonable rates and how MPC, as a subsidiary of NW, will be able to assure reasonable rates. MCC maintained that the review must encompass NW's financial condition, leverage, other business obligations and financial priorities and how NW's financial circumstances and the resources available to MPC would change as a result of the sale. The Commission must ascertain the amount of the gain above book value for the utility property and determine an appropriate disposition of any gain. MCC stated that if the gain accrues to Touch America and Touch America will not be subject to Commission jurisdiction after the sale, the Commission must determine how the appropriate disposition of the gain will be accomplished.

5. MCC commented that the Commission should evaluate what commitments regarding the provision of reliable and reasonably priced electric service, including generation supply costs, should be a condition of the Commission's approval of the sale. The review of the sale should investigate the assertion in the Application that "NorthWestern was the clear choice" from a broad group of potential buyers. What are the potential costs and benefits of NW's acquisition of MPC for ratepayers? Could NW develop and maintain utility-scale generation if it is determined that is the best way to achieve reliable service at a reasonable cost in the future?

#### **Large Customer Group**

6. Large Customer Group (LCG) commented that MPC and NW, in their application for disposition of jurisdictional facilities with the Federal Energy Regulatory Commission

(FERC), committed, as a condition of FERC approval of the proposed transaction, that wholesale generation and transmission customers would be held harmless from any adverse effects of the transaction. In particular, MPC and NW committed not to recover in FERC-regulated, cost-based rates any transaction-related costs, such as the acquisition premium, in excess of transaction-related savings. MPC and NW committed, in a future rate proceeding, to identify and account for all transaction costs and demonstrate that any transaction-related costs included in their cost of service are exceeded by transaction-related savings. LCG stated that similar commitments could be relevant to the Commission's determination of whether MPC, as a subsidiary or division of NW, will continue to provide just and reasonable retail rates. According to LCG, it is not self-evident that the allocation of proceeds from the sale is not germane to the Commission's review, as MPC and NW asserted in their Application. LCG maintained that the review of the sale should include an evaluation of whether the structure of the sale isolates the value captured for MPC from regulatory scrutiny and from ratepayers who contributed to that value.

7. LCG stated that NW's position on the unresolved transition cost issues in Docket D97.7.90 could have a substantial impact, adverse or favorable, on customers and on whether rates will be just and reasonable after the sale. LCG stated that the Commission should condition approval of the sale on ascertaining NW's position on transition costs, and other outstanding issues affecting MPC, and obtain commitments that customers will not be prejudiced.

### **Commission Decision**

8. The PSC has jurisdiction to approve sales of public utility property under Title 69, Chapters 3, MCA. The PSC's jurisdiction to review and approve a transfer of utility assets and public utility obligations to another entity is found under general and implied authority in Title 69, Chapter 3, MCA. Public utilities have an on-going obligation to serve, which cannot be unilaterally terminated. The PSC has the authority to take actions that promote adequate utility service at reasonable rates. Reviewing and approving the sale of utility assets and transfers of obligations are such actions subject to PSC jurisdiction.

9. The Commission disagrees with the applicants that issues related to the amount and disposition of any gain on the sale of MPC's utility property and the transfer of its utility service obligations are not germane to this proceeding. The application submitted by MPC and

NW is inadequate, given the scope of the Commission's authority and responsibility to review and approve sales and transfers of public utility assets and service obligations. The application places the burden on the Commission and intervening parties to extract from MPC through discovery sufficient information to determine whether and under what conditions the sale is in the public interest. The application does not demonstrate the book value of the utility property being transferred to NW or the amount over book value NW agreed to pay for the property. The applicants make no commitments regarding the level of rates following the transaction. Thus, the application offers no basis for the Commission to evaluate the extent to which MPC, as a division or subsidiary of NW, would provide service after the transaction at the same or better rates and service quality than would otherwise have been the case.

10. The Commission will not proceed with this case until MPC and NW re-file their application with sufficient information for the Commission and intervenors to fully evaluate whether the transaction is in the public interest. At a minimum, the application must address the following:

- 1) the current book value of all electric and natural gas utility property involved in the transaction;
- 2) the proposed purchase prices for the electric and natural gas utility properties;
- 3) support for proposed allocation of any above book proceeds associated with the transaction;
- 4) any commitments by NorthWestern related to the level of rates, including rates for default electricity supply, and service quality after the transaction;
- 5) any commitments by Northwestern that an acquisition adjustment will not be sought;
- 6) support for applicants' claim that, out of a group of potential purchasers, NorthWestern was the clear choice for the transaction;
- 7) NorthWestern's ability to develop and maintain utility-scale generation to serve loads in the acquired electric service territory, if, in the future, it is determined to be in the public interest;
- 8) any operational efficiencies NorthWestern expects to achieve after the transaction;
- 9) any system weaknesses NorthWestern identified in its due diligence;

- 10) MPC's financial ability, as a division or subsidiary of NorthWestern, to provide continued reliable service at just and reasonable rates under any reasonable outcome in Docket No. D97.7.90 regarding transition costs and charges. Applicants should analyze the effect on the financial strength of the utility, rates and service quality of various levels of transition charges, including no transition charge.

### **Conclusions of Law**

1. All conclusions of law reached above or incorporated herein.
2. The Montana Public Service Commission regulates the rates and services of public utilities. Title 69, Chapter 3, MCA.
3. Montana Power Company is a public utility subject to the jurisdiction of the Commission.
4. In exercising its jurisdiction, the Commission must oversee and approve any sale and transfer of utility assets and obligations in order to assure that the utility's customers will continue to have adequate service and that the utility's rates will not increase as a result of the sale/transfer. The Commission must be satisfied that the acquiring entity is fit, willing and able to assume the service responsibilities associated with the ownership of the utility facilities.
5. The Commission has the power to prescribe rules of procedure and to do all things necessary and convenient in the exercise of its powers, including the power to regulate the mode and manner of all investigations and hearings under Title 69, Chapter 3, MCA.

### **Order**

The joint application for approval of the sale of Montana Power Company to NorthWestern Corporation, as filed, is denied. Applicants may refile their application consistent with the directions in this order.

DONE AND DATED this 26th day of June, 2001, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GARY FELAND, Chairman

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JAY STOVALL, Vice Chairman

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BOB ANDERSON, Commissioner

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MATT BRAINARD, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.  
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.